

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL LEE CLARK)	
Claimant)	
VS.)	
)	Docket No. 217,371
OVERLAND PARK MAINTENANCE MGMT., INC.)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

DANIEL LEE CLARK)	
Claimant)	
VS.)	
)	Docket No. 217,372
SUPERIOR DOOR SERVICE OF JOHNSON COUNTY, INC.)	
Respondent)	
AND)	
)	
AMERICAN STATES INSURANCE)	
Insurance Carrier)	

ORDER

Respondent Superior Door Service and its insurance carrier, American States Insurance Company, appeal from an Order entered by Administrative Law Judge Steven J. Howard on February 26, 1997.

ISSUES

The above two captioned cases were consolidated for purposes of preliminary hearing. In the case against Overland Park Maintenance Management, Inc., Docket No. 217,371, claimant alleges that he injured his low back on May 10, 1996. In the claim against Superior Door Service of Johnson County Inc., Docket No. 217,372, claimant alleges an additional injury on August 29, 1996. The Administrative Law Judge entered an Order for medical treatment and assessed the costs of that medical treatment to Superior Door Service and American States Insurance, the employer and insurance carrier for the second injury. On appeal, respondent Superior Door Service and its insurance carrier, American States Insurance Company, asked for review of the following two issues:

- (1) Whether claimant sustained personal injury by accident on August 29, 1996.
- (2) Whether the alleged accidental injury of August 29, 1996, arose out of and in the course of claimant's employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed. More specifically, the Appeals Board finds and concludes:

- (1) The issues raised by respondent on appeal are subject to review in accordance with K.S.A. 1966 Supp. 44-534a.
- (2) Claimant did suffer accidental injury on August 29, 1996.

Respondent Superior Door Service asserts that the event claimant describes on August 29, 1996, did not constitute an accident. Claimant had earlier injured his low back in the course of his employment for Overland Park Maintenance Management. Overland Park Maintenance Management admits the compensability of the injury on May 10, 1996.

Claimant began working for respondent Superior Door Service in June 1996. After he had been released from treatment for his first injury, claimant experienced an acute exacerbation of symptoms while at work for Superior Door Service. Claimant testified that he had been attempting to untangle a chain while on his hands and knees on the floor. As he stood up, he experienced an onset of symptoms which substantially worsened over the next hour. Claimant ultimately passed out and fell. He was off work for the next two weeks.

Respondent argues that the event, as described by claimant, did not constitute an accident. The Appeals Board disagrees. The definition of accident does not require a manifestation of force. Admittedly, the event claimant describes reaches the borders of

the definition of accident. Nevertheless, the Appeals Board concludes that it did constitute an accident as contemplated under the Kansas Workers Compensation Act. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978).

(3) The accidental injury of August 29, 1996, did arise out of and in the course of employment.

As above indicated, claimant suffered an earlier injury in his employment with Overland Park Maintenance Management. He was off for three days, treated, and released from treatment before the injury at Superior Door Service. Claimant did continue to have problems with his back, even though released from treatment. The symptoms would come and go. Nevertheless, it seems clear that the accident at Superior Door Service constituted at least an aggravation of that preexisting injury which constituted a compensable injury. Claimant's condition suddenly worsened at that time. The current need for medical treatment should, therefore, be attributed to the later accident.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Steven J. Howard, dated February 26, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: C. Edward Peterson, Kansas City, MO
Stephanie Warmund, Kansas City, MO
Wade A. Dorothy, Lenexa, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director